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S T A T E M E N T

BY THE FOREIGN MINISTER OF SPAIN

HIS EXCELLENCY MR. FRANCISCO FERNANDEZ ORDOÑEZ

ON BEHALF OF THE EUROPEAN COMMUNITY

AND ITS TWELVE MEMBER STATES

AT THE FORTY-FIFTH SESSION

OF THE COMMISSION ON HUMAN RIGHTS

22 FEBRUARY 1989

Allow me, Mr. Chairman, to start by expressing the pride the Twelve feel in having you presiding over our work. It is not an easy task to be the successor to Ambassador Sene, whose wisdom and talent were once again patent during the last session. We wish you success in the conducting of the current session, and we ask you to extend our best wishes to the rest of the officers of the 45th Session of the Commission on Human Rights.

Mr. Chairman,

Since this is the first time that the Twelve Member States of the European Community address the Human Rights Commission through a single voice, allow me to recall before this important body of the United Nations that respect for human rights is one of the corner-stones upon which European cooperation has been built over the past thirty years.

The recognition of the inalienable rights and the essential dignity inherent to the human condition is deeply rooted in our European heritage. From our Greek and early Christian thinkers, medieval humanists and modern reformers, we share a rich and varied moral, intellectual and legal tradition, of which the 200-year-old Déclaration des Droits de l'Homme et du Citoyen - that the French Prime Minister so eloquently recalled only a few days ago, before this forum - is one of the most significant examples.

As we laid down in the 1986 Brussels Ministerial Statement and have reaffirmed on many different occasions since then, the Twelve are deeply committed to the respect, protection and further promotion of human rights and fundamental freedoms, in the context of the principles of parliamentary democracy and the rule of law. It is in line with this tradition and this commitment that I take the floor before you today.

Mr. Chairman,

Last December the international community commemorated the 40th anniversary of the Universal Declaration of Human Rights. The Twelve then reconfirmed that recognition of the inherent dignity and the equal inalienable rights of all members of the human family is the foundation of freedom, justice and peace.

As the then Presidency of the Twelve stated before the General Assembly of the United Nations on that occasion, respect for human rights has become a moral, a normative and a political imperative. Governments that choose to violate fundamental rights and freedoms erode their legitimacy. We thus consider the defence and promotion of universally accepted human rights as the duty of the world community and of every nation. We are also of the view that the catalogue of rights included in the Universal Declaration of 1948 is an indivisible whole and cannot be subject to hierarchisation, selectivity or ideological evaluation.

Consequently, the Twelve attach essential importance to the respect of human rights and fundamental freedoms in their relations with other countries. Moreover, it is our firm conviction that raising human rights issues and expressing concern for violations of internationally recognized rights cannot be considered interferences in internal affairs. As the International Court of Justice has pointed out; "The principles and rules related to fundamental rights of the human being represent obligations for governments towards the international community as a whole".

We do not, however, set ourselves as examples or believe human rights protection has no flaws within the Twelve. In addition to the binding international human rights instruments of the United Nations, we adhere to the strict Council of Europe legal binding conventions. Frequently, there are cases brought against us before the European Human Rights Commission and the European Court of Human Rights in Strasbourg.

Mr. Chairman,

The Twelve consider that a great deal of progress has been achieved on the route towards full recognition of human rights in the last 40 years, due in large measure to the efforts of the United Nations. Old disputes - about Article 2,7 of the Charter, for example - have been shelved. Decolonization and the enshrinement of the right of peoples to self-determination have changed the face of the world. A new awareness of each person's rights as an individual and as a member of a political and cultural community is present today in every corner of our planet. A new solidarity among peoples is also a major new development. At the same time we experience a widespread growth of non-governmental organizations concerned with human rights, a good number of which contribute highly to the work of this Commission. Governments engaged in human rights abuses have to confront the fact that individuals have acquired substantial rights under international law.

More specifically, the Twelve observe that the fight for human rights has made progress in different areas of the world during the last decade. In several continents, among them Latin America, political regimes based on the omnipotence of the State, with near total disregard for the individual, have been replaced by elected governments aware of their obligations concerning human rights. The Twelve welcome this development which must be irreversible, in spite of the problems some of these countries face in the implementation of effective guarantees for the protection of those rights and the full democratization of their State apparatus and society.

The Twelve also follow closely the changes that can be observed in the human rights concepts and the trends towards improved respects for human rights in some, although regrettably not all, Eastern European countries. These changes facilitated the adoption only a few weeks ago, in Vienna, of a CSCE concluding document, a development of great potential significance, which provides the 35 participating States with more precise criteria to implement and monitor a genuine respect for fundamental human rights. It would be highly desirable if similar developments as those occuring in various degrees in Hungary, the Soviet Union and Poland were to take place in other countries in that region as well.

The Twelve would like to stress that human rights are not only a European or Western concern. Human rights are universal and the unacceptable limitations or qualifications that some governments choose to impose upon them, in defiance of International Law can have no moral, philosophical, ideological or cultural basis.

Mr. Chairman,

But systematic violations of human rights continue to be the rule in many areas of the world. In the last months, we have all greeted with enthusiasm scores of positive events relating to cease-fire agreements, troop withdrawals and disarmament progress. This improved international climate should foster increased concern over human rights violations and a new determination to end them. The effective implementation of accepted standards is now one of the strongest challenges the international community has to face. The Twelve consider that this Commission on Human Rights plays a central role within the system developed during the last 44 years by the United Nations for this purpose.

The codification of universally accepted norms in which this Commission has been involved is one of the most significant achievements of the United Nations. Starting with the 1966 Covenants, a comprehensive conventional framework has been developed, aimed at securing an even stronger commitment by the State parties in protecting fundamental rights and abolishing the most hateful practices. We call upon all States that have not yet done so, to become party to both Covenants, and stress the importance of making the procedure of their specific monitoring bodies as effective as possible. But even for those States not being party to any human rights Convention, compliance with human rights and fundamental freedoms as embodied in the Charter of the United Nations, the Universal Declaration of Human Rights, and as reflected by International Customary Law, is nevertheless a universal obligation.

The normative body of international human rights law elaborated by this Commission will have a welcome and much-needed addition when , hopefully during the present 45th session, the International Convention of the Rights of the Child and the second Optional Protocol of the Covenant on Civil and Political Rights on the Abolition of the Death Penalty will be finished. Other instruments like the Declaration on Human Rights Defenders have also reached a mature stage. We consider there should be norms - operative and effective ones - where the need is felt, but keeping in mind that our objective is the eradication of abuses and the effective implementation of standards, not the norms themselves.

This Commission also plays an unprecedented role in the channelling of world concern over human rights abuses and, in fact, articulates the moral and legal obligation of States and individuals towards worldwide observance of accepted standards on human rights. With the help of the many non-governmental organizations active in this field, it has become a forum for denunciation of human rights violations before an ever-increasing audience. And over the years, it has likewise developed various mechanisms for the process of inquiry and investigation of alleged human rights violations that have gained acceptance as fundamental tools for the improvement of respect for human rights in many countries.

In our view, it should now strive to become more efficient in the task of effectively promoting and implementing accepted human rights standards throughout the world. Improving established mechanisms should now be our main objective. In this connection, we support the efforts towards rationalization of the work of the Commission, and of the Sub-Commission on Prevention of Discrimination and Protection of Minorities, starting with those aimed at

speeding up the procedures. We also believe that the United Nations should assign a growing part of the budget to human rights activities, particularly to the Human Rights Centre. In this connection, the Twelve support that the Treaty monitoring bodies should have sufficient financial resources to perform their important tasks. The United Nations and its Member States have a common responsibility in this respect.

The Twelve were happy to hear on the opening day of the present session - conveyed, Mr. Chairman, by your own authorised voice - that the financial difficulties that human rights activities at the United Nations have undergone in the past years will soon be over. We support the plans of Under-Secretary Martenson to foster human rights activities, and, in particular, the timely campaign launched this year to raise the level of human rights consciousness throughout the world.

In this context, allow me to refer in particular to three of those mechanisms of this Commission which, in our opinion, have proved to be of particular relevance to the effort of effectively implementing accepted human rights standards: Special Rapporteurs, the mechanism instituted by ECOSOC Resolution 1503 and the Advisory Services.

The Twelve are particularly attached to the institution of Special Rapporteur or Special Representative. In our view, it has proved to be a key instrument complementary to the other mechanisms available to the Commission and to the system of supervision and control of the Human Rights Treaty monitoring bodies. One means of promoting and supervising the implementation of human rights must not exclude another. We deem that the institution of the Special Rapporteur should be further strengthened through a reinforcement of the material and moral means at its disposal.

"Thematic" Rapporteurs, though the most recent institution of the Commission, have proved to be very useful in contributing to the awareness of governments and public opinion to human rights questions by providing a shivering panorama of the extent to which such unlawful practices as torture, enforced or involuntary disappearances, summary executions or religious intolerance are spread.

We welcome the decision of ECOSOC to extend to two years the mandate of Thematic Rapporteurs. We also appreciate a better disposition of governments to cooperate with them. On the other hand, the mentioning of a specific country situation by a thematic rapporteur within his mandate should not be interpreted as though there were grave and mass violations taking place in that country.

In regard to Country Rapporteurs, the Twelve consider that the appointment of a Rapporteur to investigate a particular situation should be based on objective reasons and avoiding geographical selectivity. They should be nominated without any political considerations when a serious, massive and continued violation of human rights is thought to be taking place in a particular country. The Country Rapporteur should not allow the degree of cooperation offered by the government concerned to influence unduly his conclusions. We believe that both at his work in the Centre for Human Rights and - especially - on his trips to the country under examination, the Country Rapporteur needs to be adequately assisted and protected by the Organization of the United Nations.

The second relevant mechanism to which the Twelve attach particular importance is the confidential procedure established by ECOSOC Resolution 1503. It has proved an effective means of inquiry into alleged violations at the initiative of individuals or non-governmental organizations that would have been otherwise difficult to investigate. As with the Rapporteur System, the Twelve believe there is room for improvement. This procedure implies, by its very nature, a willingness to cooperate with the Commission on the part of governments concerned. Shouldn't cases concerning non-cooperating governments, such as that of Albania, be dealt with in public?

As to the Advisory Services, we consider them important as a potential preventive mechanism as well as a way to assist countries in the transitional process to democracy and the rule of law, but it does not seem advisable that this Commission resorts to the Advisory Services as a way of avoiding responsabilities in the cases of serious or systematic violations.

We express our support to Under-Secretary Martenson's intention of reinforcing Advisory Services at the Human Rights Commission.

Mr. Chairman,

From a more general point of view, the Twelve deplore the politisation which has often undermined the work of the Commission and of the Sub-Commission. The strengthening of the degree of technical competence in the approaches and analysis, the clear differentiation between the expression of genuine concern for human rights in a given country and any forum of political or ideological confrontation is, in the opinion of the Twelve, essential for the sound development of the work and for the prestige of the Commission and what it represents. A sensu contrario, we find it disturbing that in some occasions, the investigation of alleged and well-documented human rights violations should be made impossible by reactions of geographical or ideological solidarity.

Some years ago, the Commission was accused of "selectivity". It is still obvious that there are many human rights violations, in some cases very serious, that for some reason or another this Commission has never had the chance to consider. The Twelve understand that, although the spirit of cooperation and understanding must always preside over the work of the Commission, the seeking of a consensus solution to all problems raised should not become an objective that may thwart our main function of striving for universal implementation of internationally accepted norms on human rights.

Mr. Chairman,

An overview of the agenda for the 45th session reveals the tenacious persistance of hateful practices and abuses on the life and dignity of men that the efforts of the international community have not yet been able to eradicate. The Twelve reject and condemn the persistance of the system of apartheid. I shall not enumerate here the frequent diplomatic demarches and public statements made by the Twelve in the last months in denunciation of the constant violations of human rights in South Africa. The Twelve continue their common policy towards the dismantling of the system of apartheid through peaceful means and have repeatedly indicated to the authorities in Pretoria that persistance of violations of human rights and fundamental freedoms will further severely strain the relations between the Twelve and South Africa.

We believe that the Human Rights Commission is pre-eminently the forum to deal with specific human rights violations. It does so under many different agenda-items. We would not wish to go into detail on this, but would refer to the statement of the Twelve in the 3rd Committee of the General Assembly last November. In that statement the Twelve dealt extensively with specific human rights violations. We follow the human rights situation in Cyprus and East Timor with interest. We would like to see a solution to the problems there.

We continue to be concerned about the human rights situation in those countries where this Commission has appointed a Special Rapporteur or a Special Representative - Iran, Afghanistan, Chile and El Salvador. In the case of Iran, we are especially concerned by recent reports about the increase of indiscriminate executions, particularly of political prisoners opposed to the regime, and the arbitrary detentions and persecution of minorities. The offer from the Iranian authorities to cooperate with the Special Representative is a positive development. However this cooperation has to be complete and should include a full response to the numerous and serious allegations of human rights violations as well as visits to the country to enable "in situ" investigations.

* - declaration on Salman Rushdi.

At its last session, this Commission decided to accept the invitation of the Cuban Government to establish a visiting mission to Cuba in order to verify certain allegations of human rights violations. The Twelve appreciate the cooperation lent by the Cuban Government to the Mission. The Twelve await with interest the imminent release of the report and look forward to a thorough discussion. cf. ir.

The Twelve have repeatedly stated at the United Nations their position on the human rights situation in the occupied territories, which has seriously deteriorated in the past fourteen months, with the unnecessary loss of life and human rights abuses that the repression of the Palestinian uprising has brought about. The Twelve reiterate that the Fourth Geneva Convention is applicable in this case. We hope that the opportunities arising for an overall political solution will lead to the convening of an international conference to find a just and lasting solution based on the right of Palestinians to self-determination with all that this implies, and the right of all States in the region, including Israel, to exist within secure and recognised boundaries.

There are also other situations that this Commission has not addressed until now which have been the cause of great concern in the past months, and where the Twelve are ready to support action by this Commission. I am referring to the deterioration of the human rights situation in Rumania, where the resettlement policy in rural areas and the treatment of ethnic minorities are but an escalation of the hardships imposed upon the entire population. Moreover, one of the experts of our Sub-Commission, Mr. Mazilu, is deprived of his right to leave the country. We would also like to refer to the shocking events which took place in Burma last year, causing the loss of thousands of lives and revealing a pattern of widespread abuse. We consider that this situation should be addressed by the Commission. We would furthermore like to refer to the human rights violations in Iraq which, amongst others, are mentioned in the reports on involuntary disappearances and summary arbitrary executions. We are extremely preoccupied with the suffering of the Kurds there, as well as with the situation of the Kurds in some of the countries with a substantial Kurdish population.

The new climate that has developed over international relations in the past two years, which has been enhanced by the active role of the United Nations and its Secretary-General, has stirred hopes for the prompt solution of some old conflicts involving the right to self-determination.

The Twelve equally believe that the credibility of the United Nations and this Commission will be enhanced by addressing human rights questions in an objective and non-political manner. A moderation in the tone of the debates was already perceptible during the first weeks of the Commission. It can only lead to the strengthening of the mechanisms and means at our disposal in order to implement what are not only moral, but legal obligations of States towards all individuals under their jurisdiction.

Finally, I would like to stress before this Commission the full readiness of the Twelve to cooperate with this Commission and to dedicate every effort in pursuance of universal implementation of all internationally recognized human rights. We feel the United Nations and its Secretary-General should enhance their commitment in this field, after having played such an outstanding role in other areas such as pacific settlement of disputes and peacekeeping operations. The proposal to appoint a High Commissioner for Human Rights should, in the future, be reconsidered in the light of the growing awareness of and commitment to universal respect of human dignity.